

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: O.G. & David Allen Cummings)
 (See Attached Exhibit)) Sumner County
 Residential Property)
 Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

For the purpose of writing this opinion I have combined these cases. For a list of the property descriptions and values please see the attached Exhibit.

These appeals were timely filed on August 31, 2006 on behalf of the property owners with the State Board of Equalization.

These matters were reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on January 16, 2007, at the Sumner County Property Assessor's Office. Present at the hearing were David Allen Cummings and his son, Allen Cummings, the taxpayers who represented themselves, Mr. John Isbell, Assessor for Sumner County and his Chief Deputy, Mr. Don Linville.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject properties consists of four (4) farm properties located in Sumner County Tennessee that enjoy a Greenbelt Classification.

The first property on Gregory Road, Parcel 001.00 is a 135 acre farm that the taxpayer, Mr. O.G. Cummings¹ believes is worth \$103,022. Mr. Cummings wants the rotation changed from good to poor because the pasture is broken up into small parts which makes it difficult to use. While he keeps it sowed and mowed to make it look pretty, it has virtually no other use. He considers it waste land and not pasture, he also added that he does not harvest any of the property. Mr. Cummings introduced as an exhibit the Sumner County 2006 Rural Land classification sheet².

The county maintains that the property is appropriately classified and valued; Mr. Linville noted that the rotation and woodland allocations were changed from 2005 and 2006 which actually made the values go down³ and therefore feel the values assessed by the County Board of Equalization are correct.

The second property is on Absher Branch Road, Parcel 016.00 is a 154 acre farm that the taxpayer believes is worth \$48,035 because he states that the property is

¹ Mr. O.G. Cummings was the spokes person for these appeals.

² Taxpayer exhibit #1.

³ County's exhibit #1 for this parcel.

landlocked and the pasture is poor. Mr. Cummings also stated that the pasture is in narrow strips with many ditches and a steep grade which make using it difficult. Mr. Linville responded that the property is not landlocked because the taxpayer owns the adjacent parcel, at which Mr. Cummings stated he would transfer that property to his son, who is also a co-owner on most of the parcels under appeal. Mr. Linville noted that the value is correct, with the changes made in the 2006 adjustments the values actually went down from a year ago⁴.

The third property, 259 Highway, Parcel 019.08 is a 29 acre farm, (Mr. Cummings did not place a value on the property on his appeal form, question #15, and did not testify to a specific value at the hearing). The taxpayer stated that the "Woodland class should be changed to poor not average, it is a creek bank and should be reduced in value". Mr. Cummings also stated that a ridge runs through his property which also diminishes the value. Mr. Linville noted, as in the previous parcels, that the rotation allocations were changed in 2006 which has reduced the taxpayer's tax liability⁵.

The fourth property is also at 259 Highway, but is parcel 025.00, this is an 86 acre tract of land that has a home and several service buildings located on it. Mr. Cummings believes that the property should be valued at \$183,859. Mr. Cummings stated that the house is 100 years old and that in 1983 he spent only \$50,000 to renovate it. While Mr. Cummings agrees that the county has made adjustments in the past to reduce the value he wants further adjustments made.

The assessor contends that the property should be \$176,300 based upon the action of the Sumner County Board of Equalization.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

Since the taxpayer is appealing from the determination of the Sumner County Board of Equalization, he has the burden of proof. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981)

In the present case the taxpayer represented the interest of four (4) separate properties; he however, presented no proof in support of his argument that the property values set by the Sumner County Equalization Board are too high and should be reduced.

⁴ Same as #3

⁵ Same as above.

There are commonly three (3) approaches to determine the market value of real estate. Some of the approaches are more appropriately used for specific types of properties. These approaches are (1) the cost approach, which is defined as the current cost of reproducing or replacing the improvement (including an appropriate entrepreneurial incentive or profit); (2) the sales comparison approach which determines value by comparing recent sales of comparable properties in the market⁶ and (3) the income capitalization approach which determines value by an indication of the property's earning power, based on the capitalization of income. *The Appraisal of Real Estate*, 12th Ed., 2001.

Stated simply, all three approaches to value are not always relevant or useful in the valuation of every property. *Property Assessment Valuation*, 2nd Ed., 1996.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should remain at the values set by the County Board based upon the presumption of correctness attaching to the decision of the Sumner County Board of Equalization.

The taxpayers argument for equal treatment is without merit. The case law is replete with cases that essentially hold that it is of no consequence how much or how little your neighbors' property is valued but being able to demonstrate by competent evidence the fair market value of your own property, that is essential in proving the County Boards' values are incorrect as Mr. Cummings alleges here.

With respect to the issue of market value, the administrative judge finds that Mr. Cummings introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to TCA § 67-5-504(a).

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsop, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own,** . . . (emphasis supplied)

In yet another case, the administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et. al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to

be valued and equalized according to the "Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and **equalized by application of the appropriate appraisal ratio . . .**" *Id.* at 1.(emphasis added).

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment.** Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects.** . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3. There has been no such evidence presented here.

The Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) has also stated as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, **but relevant differences should be explained and accounted for by reasonable adjustments.** If evidence of a sale is presented **without the required analysis of comparability**, it is difficult or impossible for us to use the sale as an indicator of value. . . . Final Decision and Order at 2. (emphasis added)

In analyzing the arguments of the taxpayer's, regarding the allocation of the property's rotation schedules it should be noted that these determinations are made at the local level by the County Board in compliance with the statutory definitions contained in The Agricultural, Forest and Open Space Land Act of 1976, commonly known as the *Greenbelt Law*. The taxpayer, Mr. Cummings, produced nothing to show that the county's allocation was incorrect.

The taxpayer did not meet his burden of proof in this cause.

ORDER

It is therefore ORDERED that the values and assessment to be adopted for tax year 2006 are contained in the attached exhibit.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

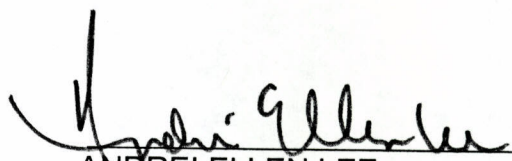
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of February, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. David Allen Cummings
John Isbell, Assessor of Property

EXHIBIT

Taxpayers: O.G. & David Allen Cummings

<u>Location</u>	<u>Parcel</u>	<u>Land Value(\$)</u>	<u>Improvement Value(\$)</u>	<u>Total Value(\$)</u>	<u>Assessment(\$)</u>
Gregory Rd.	01200100 000	93,000	0	93,000	23,250
Absher Branch	00401600 000	86,100	0	86,100	21,525
259 HWY	01501908 000	24,900	0	24,900	6,225
259 HWY	01405500 000	88,500	0	88,500	56,375